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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re C.B., a Person Coming Under the  
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

LEONARD B.,

Defendant and Appellant.

D069774

(Super. Ct. No. SJ013202)

APPEAL from a judgment of the Superior Court of San Diego County, Kenneth J.  
Medel, Judge. Affirmed.

Patti L. Dikes, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Thomas E. Montgomery, County Counsel, John E. Philips, Chief Deputy County  
Counsel, and Emily K. Harlan, Deputy County Counsel, for Plaintiff and Respondent.

Leonard B. (Father) appeals the juvenile court's jurisdictional and dispositional rulings sustaining a dependency petition pursuant to Welfare & Institutions Code section 300, subdivision (b)<sup>1</sup> and removing his infant daughter, C.B., from Mother and Father's custody.<sup>2</sup> Father argues the evidence was insufficient to support the court's ruling that C.B. was at substantial risk of harm and removal from his home was the only reasonable means of protecting her. We conclude substantial evidence supports the juvenile court's findings and affirm the judgment.<sup>3</sup>

#### FACTUAL AND PROCEDURAL BACKGROUND

Infant C.B. came to the attention of the San Diego County Health and Human Services Agency (the Agency) in October 2015, when she tested positive for opiates and suffered withdrawal symptoms of respiratory distress at birth. The Agency filed a petition under section 300, subdivision (b), alleging C.B. had suffered or was at substantial risk of suffering serious physical harm or illness as a result of her parents' inability to adequately supervise or protect her. C.B. was hospitalized in the neonatal intensive care unit (NICU) and placed on a methadone taper.

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<sup>1</sup> Further statutory references are to the Welfare and Institutions Code, unless otherwise specified.

<sup>2</sup> C.B.'s mother (Mother) did not file a separate appeal or join in Father's appeal.

<sup>3</sup> The dispositional order is an appealable judgment pursuant to Welfare and Institutions Code section 395. (*In re S.B.* (2009) 46 Cal.4th 529, 531-532.)

A social worker interviewed Mother at the hospital following C.B.'s birth. Mother admitted using heroin daily for the previous three years. She enrolled in a methadone treatment program once she found out she was pregnant but nevertheless used heroin 10 to 15 times during her pregnancy to cope with withdrawal symptoms. She last used heroin two to three weeks before C.B.'s birth. Mother stated Father used heroin with her in the past but denied he was an addict.

The social worker interviewed Father at his home. Father stated he knew Mother used heroin during the pregnancy. She was getting sick from withdrawal symptoms, and doctors told her to use any means to avoid sickness to protect the baby. Father took this to mean that she could even use heroin to avoid sickness.

Father admitted to a history of substance abuse. He became addicted to prescription drugs (Percocet and OxyContin) in 2012, after a car accident. He switched to heroin when prescription medications became too expensive. Father met Mother through their drug dealer. He claimed he had been sober since October 2013 and that he reached sobriety on his own, without treatment. Father agreed to a voluntary safety plan with the Agency that included random drug tests and a release of his medical information. He gave the social worker a urine sample.

The day after his interview, Father called the social worker and rescinded his signed medical release. He told the social worker he did not want her to contact any of his medical care providers, but that if his urine sample tested positive, it would be because of his prescription medications. Two days later, the urine sample returned positive for morphine and opiates. Father told the social worker he could obtain

documentation to explain the test results but never did so. He failed appear for subsequent drug tests.

Mother and Father appeared at the November 2015 detention hearing. C.B. remained hospitalized in the NICU. The juvenile court made a prima facie finding on the Agency's petition and ordered C.B. detained outside her parents' home. C.B. was discharged in December 2015, after spending 45 days detoxing from heroin and methadone in the NICU.

At the initial jurisdiction and disposition hearing on December 9, 2015, the court elevated Father's status from alleged to presumed and set a trial date for a contested hearing. Mother requested permission to breastfeed C.B., but the court ordered her to seek medical advice as to whether it would be safe to breastfeed while on methadone.

Prior to the settlement conference in January 2016, Father provided a list of all the medications he was allegedly prescribed. The list spanned six pages and contained over 100 medications, including hydromorphone, Valium, Percocet, and Norco. Father did not provide prescription bottles or dosage information to show that the drugs had been prescribed by a doctor for pain management.

In February 2016, the court held a trial on jurisdiction and disposition. The court received into evidence the Agency's reports, documentation of Mother's attendance in the methadone treatment program, and a letter from C.B.'s pediatrician regarding breastfeeding. The Agency remained opposed to Mother breastfeeding C.B. Mother was no longer tapering her methadone dosage and had relapsed, testing positive for morphine and codeine in January. The Agency expressed concern that there was no way to

determine how much methadone passed onto C.B. through breastmilk; all but one doctor believed formula was the safer option.<sup>4</sup> C.B. suffered "a significant spike in her withdrawal score" after Mother ignored her doctors' advice and breastfed C.B.

Father testified on his behalf at trial. He denied making several statements attributed to him in the Agency's reports. Father denied admitting to substance abuse and condoning Mother's substance abuse during pregnancy. He admitted he met Mother through a drug dealer but claimed he did not know the person was a drug dealer at the time. Father testified he had been sober since 2013 and only used prescribed medications.

Out of his list of 100 medications, Father claimed he was currently only taking Vicodin, Percocet, and codeine, all on valid prescriptions to treat his chronic pain. Father's pain could be excruciating; he had been to the emergency room approximately 36 times in 2015 alone for morphine. He dealt with "extreme pain on a daily and regular basis, every single day." Father had "shooting, electrical, stabbing pain" throughout his back, shoulders, and head, and he sometimes found it difficult to stand straight or get out of bed without medication. Father denied ever having used heroin.

Father testified that he and Mother were engaged and had lived together for three years. Father intended to continue living with Mother while she continued her treatment. They had purchased diapers and clothing for C.B. for the next 18 months, and Father

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<sup>4</sup> Mother presented a letter dated January 29, 2016, from a pediatrician clearing C.B. for breastfeeding. The juvenile court did not credit this letter, finding it failed to address Mother's persistent drug problem or recent relapse.

believed it would be safe to return C.B. to their care. Father claimed he had never been given a fair chance to show his worth as a father.

The court made a true finding on the Agency's petition and assumed jurisdiction, finding that C.B. was a child described by section 300, subdivision (b)(1).<sup>5</sup> Turning to disposition, the court removed C.B. from the custody of both parents under section 361, subdivision (c)(1),<sup>6</sup> placed C.B. with her maternal grandparents, and ordered six months of reunification services.

Father timely appealed the jurisdictional and dispositional orders.

## DISCUSSION

### I

#### MOTHER'S CONDUCT WAS SUFFICIENT TO BRING C.B. WITHIN THE JUVENILE COURT'S JURISDICTION

Father challenges only the findings and orders made as to him. He does not challenge the jurisdictional allegations sustained as to Mother, and Mother has not filed a separate appeal. Because "it is necessary only for the court to find that one parent's conduct has created circumstances triggering section 300 for the court to assert

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<sup>5</sup> Section 300, subdivision (b)(1) provides a basis for jurisdiction if "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child . . . or by the inability of the parent or guardian to provide regular care for the child due to the parent's . . . substance abuse."

<sup>6</sup> Section 361, subdivision (c)(1) provides a basis for removal if "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody."

jurisdiction over the child" (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1491), we would affirm the juvenile court's jurisdictional ruling irrespective of Father's appeal. (*In re M.W.* (2015) 238 Cal.App.4th 1444, 1452 ["As a general rule, a single jurisdictional finding supported by substantial evidence is sufficient to support jurisdiction and render moot a challenge to the other findings."].)

Nonetheless, we retain jurisdiction to consider the merits of Father's appeal and do so where, as here, the jurisdictional finding " '(1) serves as the basis for dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations]; or (3) 'could have other consequences for [the appellant], beyond jurisdiction.' " (*In re M.W., supra*, 238 Cal.App.4th at p. 1452.) "Here, the outcome of this appeal is the difference between father's being an 'offending' parent versus a 'non-offending' parent. Such a distinction may have far reaching implications with respect to future dependency proceedings in this case and father's parental rights. Thus, although dependency jurisdiction over [C.B.] will remain in place because the findings based on mother's conduct are unchallenged, we will review father's appeal on the merits." (*In re Drake M.* (2012) 211 Cal.App.4th 754, 763 (*Drake M.*); see *In re M.W., supra*, at p. 1452 [addressing mother's appeal of some, not all, of the juvenile court's jurisdictional findings].)

## II

### SUBSTANTIAL EVIDENCE SUPPORTS THE COURT'S JURISDICTIONAL FINDINGS AS TO FATHER'S CONDUCT

Father contests the juvenile court's jurisdictional order on grounds that: (1) there was insufficient evidence C.B. faced a risk of harm at the time of trial, as she had been released from the NICU and was no longer experiencing withdrawal symptoms; and (2) there was insufficient evidence Father was a substance abuser or would be unable to protect C.B. from harm. We conclude substantial evidence supports both jurisdictional findings.

#### A. *Legal Principles*

In a dependency proceeding, the juvenile court must first determine whether the minor is a child described under section 300 and, therefore, subject to the court's jurisdiction. (*In re A.S.* (2011) 202 Cal.App.4th 237, 243-244.) The Agency bears the burden of proving the child comes within the court's jurisdiction. (*Id.* at p. 244.)<sup>7</sup> "The basic question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm." (*Ibid.*)

We review the court's jurisdictional ruling for substantial evidence. Our inquiry "begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact." (*In re Katrina C.* (1988) 201 Cal.App.3d 540, 547.) Where more than one

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<sup>7</sup> "Jurisdictional findings must be made by at least a preponderance of the evidence." (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 248.) Here, the juvenile court made its jurisdictional findings by clear and convincing evidence.



inference can reasonably be deduced from the facts, we are without power to substitute our deductions for those of the juvenile court. (*Ibid.*) "However, substantial evidence is not synonymous with *any* evidence. [Citations.] A decision supported by a mere scintilla of evidence need not be affirmed on appeal." (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.) "The ultimate test is whether it is reasonable for a trier of fact to make the ruling in light of the whole record.'" (*Ibid.*)

B. *There is Substantial Evidence C.B. Faced a Substantial Risk of Harm at the Time of the Jurisdictional Hearing*

Father argues that because C.B. had been released from the NICU and no longer showed withdrawal symptoms, the Agency did not meet its burden to show a risk of harm at the time of the contested jurisdiction and disposition hearing. "While evidence of past conduct may be probative of current conditions, the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm." (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.) "Thus the past infliction of physical harm by a caretaker, standing alone, does not establish a substantial risk of physical harm; '[t]here must be some reason to believe the acts may continue in the future.'" (*Ibid.*; see *In re Savannah M.*, *supra*, 131 Cal.App.4th at p. 1396 [there must be "evidence showing a substantial risk that past physical harm will reoccur"]; *In re Destiny*

S. (2012) 210 Cal.App.4th 999, 1004 [there must be "proof of a current risk to the child"].)<sup>8</sup>

Here, C.B. suffered serious physical harm as a result of in utero heroin and methadone exposure, and she spent 45 days detoxing in the NICU. C.B. *remained* at substantial risk of physical harm after her birth. Mother relapsed on opiates after C.B.'s birth and tested positive for morphine and codeine. Although Mother stopped tapering her methadone dose, she insisted on breastfeeding. C.B. suffered "a significant spike in her withdrawal score" after Mother breastfed against her doctors' advice.<sup>9</sup>

The juvenile court reasonably found a substantial risk of harm at the time of the jurisdictional hearing. For children of such tender years as C.B., "the finding of substance abuse is *prima facie* evidence of the inability of a parent or guardian to provide regular care resulting in a substantial risk of serious physical harm." (*Drake M.*, *supra*, 211 Cal.App.4th at p. 767.) The issue was not merely whether C.B. had recovered from her withdrawal symptoms but whether she remained at risk of physical harm. (*In re Petra B.* (1989) 216 Cal.App.3d 1163, 1169 [rejecting argument that because child's

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<sup>8</sup> There is a split of authority as to whether a single incident of parental neglect resulting in physical harm is sufficient to support jurisdiction under section 300, subdivision (b), absent evidence the harm is likely to recur. (Compare *In re J.N.* (2010) 181 Cal.App.4th 1010, 1023 with *In re J.K.* (2009) 174 Cal.App.4th 1426, 1435.) We need not decide which view is correct; as Father notes, this case does not involve a single alleged incident of parental neglect.

<sup>9</sup> While one doctor wrote a letter in January 2016 suggesting C.B. could begin breastfeeding, the juvenile court gave this little weight against evidence that other doctors believed breastfeeding while taking methadone would place C.B. at risk. We do not disturb the juvenile court's credibility determinations on review for substantial evidence.

wounds had healed, she was no longer in need of the court's protection at the time of the jurisdictional hearing].) Mother's continued drug use, and Father's failure to curb its effects, support a finding that infant C.B. remained at substantial risk of serious physical harm at the time of the jurisdictional hearing. (See *In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 825 [parent's drug use posed a substantial risk of physical harm]; *In re Stephen W.* (1990) 221 Cal.App.3d 629, 639-640 [mother's opiate use during pregnancy and infant's withdrawal symptoms at birth probative of risk of future neglect]; *In re J.C.* (2014) 233 Cal.App.4th 1, 6 [father's failure to protect unborn child from in utero drug exposure supported jurisdiction over infant].)

C. *There is Substantial Evidence Father Was a Substance Abuser*

In sustaining the Agency's petition, the juvenile court found true the allegation that Father "admitt[ed] to a history of drug usage/ has a history of drug usage and tested positive for morphine and opiates" just days after C.B.'s birth. Father argues there was insufficient evidence to support a finding that *he* was a substance abuser. To the contrary, the evidence before the juvenile court showed more than the lawful use of prescription medication.<sup>10</sup>

Father told the social worker he was addicted to Percocet and OxyContin in 2012 and switched to heroin in 2012 and 2013. Father's parents claimed his use of prescription drugs during that period "got out of hand." Mother stated Father used heroin with her

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<sup>10</sup> While the juvenile court made tangential remarks about the phenomenon of recreational prescription drug abuse "plaguing our society," we review the court's ruling, not its reasoning. (*In re A.S.*, *supra*, 202 Cal.App.4th at p. 246.) We will not disturb the ruling merely because of the court's gratuitous comments. (*Ibid.*)

previously, and they met through their drug dealer. Although Father claimed to have reached sobriety in 2013, he testified he visited the emergency room approximately 36 times in 2015 for morphine. He admitted he was currently taking Vicodin, Percocet, and codeine. At no point did he provide evidence these medications had been medically prescribed for pain management. The only urine sample he provided returned positive for morphine and opiates a few days after C.B.'s birth. There was, without question, substantial evidence to support the court's finding that Father had a history of drug use and tested positive for morphine and opiates right after C.B.'s birth.

These same facts belie Father's contention he was merely a drug *user*, not abuser. Father cites *Drake M.*, *supra*, 211 Cal.App.4th at page 754, in which the court looked to DSM-IV-TR categories to distinguish "substance abuse" from "substance use." (*Id.* at p. 766.)<sup>11</sup> *Drake M.* concluded the father's legal use of medical marijuana did not support a finding that he was a substance abuser. (*Id.* at pp. 767-768.) We agree with *In re Christopher R.*, *supra*, 225 Cal.App.4th at page 1218 —the DSM criteria, while useful, are not the *exclusive* basis to determine whether a person is a substance abuser. (*Id.* at p. 1218.) *Christopher R.* found jurisdiction proper based on the mother's cocaine use during pregnancy and the father's daily marijuana use, which "demonstrated an inability to provide regular care for [the] infant." (*Id.* at pp. 1218-1220.) Similarly, evidence of

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<sup>11</sup> The Diagnostic and Statistical Manual of Mental Disorders is published by the American Psychiatric Association. DSM-5, which replaced DSM-IV, does not separate the diagnoses of substance abuse and dependence. (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1218, fn. 6.)

Mother's heroin use during pregnancy and Father's prescription drug intake demonstrated Father's inability to provide regular care for C.B.<sup>12</sup>

Father argues that even if he used drugs, there was insufficient evidence he was unable to protect C.B. from physical harm. Father again cites *Drake M.*, in which the court concluded there was no evidence the father's use of medical marijuana hampered his ability to supervise or protect the toddler. (*Drake M.*, *supra*, 211 Cal.App.4th at p. 768.) Father's argument lacks merit.

Father conceded Mother "struggled with recovery," but he planned to continue living with her. Father stated he would ask Mother to leave if she used drugs, but he and Mother were engaged, and there was no evidence he had asked her to leave after her relapse or C.B.'s breastfeeding-induced spike in withdrawal score. Father did not seem to take Mother's addiction seriously or recognize the risks it posed to C.B. Although C.B. suffered "withdrawal symptoms of respiratory distress" at birth and required 45 days of hospitalization, Father claimed he "wouldn't call [Mother's drug use] a problem" because he "didn't see it in an addictive manner." Father told the social worker he "100% support[ed] the mother's use of heroin during pregnancy," as he believed it helped

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<sup>12</sup> Moreover, *Drake M.* is readily distinguishable. In that case, the father produced a valid medical marijuana certificate and submitted to multiple random drug tests before the jurisdictional hearing. (*Drake M.*, *supra*, 211 Cal.App.4th at pp. 759-760, 767.) By contrast, Father never produced evidence of his prescriptions and refused to submit to random drug testing. Father diluted the only urine sample he did provide, and it returned positive for morphine and opiates. That a contrary finding might also be supported by Father's testimony is irrelevant. (*In re Manuel G.* (1997) 16 Cal.4th 805, 823.)

prevent Mother from getting sick and losing the baby.<sup>13</sup> "A parent's past conduct is a good predictor of future behavior." (*In re T.V.* (2013) 217 Cal.App.4th 126, 133.)

Father's encouragement of Mother's heroin use during pregnancy demonstrates his inability to protect C.B. from physical harm. (*In re J.C.*, *supra*, 233 Cal.App.4th at pp. 4-5 [father's encouragement of mother's prenatal drug use supported jurisdiction].)

In short, the juvenile court's jurisdictional findings are supported by substantial evidence.

### III

#### SUBSTANTIAL EVIDENCE SUPPORTS THE COURT'S DISPOSITIONAL FINDING

Father also challenges the sufficiency of the evidence supporting the juvenile court's dispositional order. He argues there was insufficient evidence removal from his custody was necessary to protect C.B. As with the jurisdictional findings, we conclude substantial evidence supports the court's dispositional finding.

##### A. *Legal Principles*

After the court finds jurisdiction, it must conduct a dispositional hearing to decide where the child will live while under the court's supervision. (*In re A.S.*, *supra*, 202 Cal.App.4th at p. 247; § 361, subd. (c).) " 'Before the court issues a removal order, it must find the child's welfare requires removal because of a substantial danger, or risk of danger, to the child's physical health if he or she is returned home, and there are no

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<sup>13</sup> The court was entitled to credit Father's statements to the social worker that he supported Mother's heroin use while she was pregnant, irrespective of Father's contrary testimony at trial. (§ 355, subd. (b) [Agency's reports and Father's hearsay statements within it, were admissible].)

reasonable alternatives to protect the child.' " (*In re A.S.*, at p. 247; § 361, subd. (c)(1).)

Reasonable alternatives to removal include "removing an offending parent or guardian from the home" and "[a]llowing a nonoffending parent or guardian to retain physical custody as long as that parent or guardian presents a plan acceptable to the court demonstrating that he or she will be able to protect the child from future harm." (§ 361, subd. (c)(1)(A)-(B).) "The focus of the statute is on averting harm to the child," and the court "may consider a parent's past conduct as well as present circumstances." (*In re A.S.*, at p. 247.)

The Agency bears the burden of proving, by clear and convincing evidence, that there is "a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home," *and* that even with the provision of services, there is no other reasonable way to protect her. (§ 361, subd. (c)(1).) "The elevated burden of proof for removal from the home at the disposition stage reflects the Legislature's recognition of the rights of parents to the care, custody and management of their children, and further reflects an effort to keep children in their homes where it is safe to do so." (*In re Hailey T.* (2012) 212 Cal.App.4th 139, 146.)

The clear and convincing standard governs the juvenile court but is not the standard for appellate review. (*In re A.R.* (2015) 235 Cal.App.4th 1102, 1115.) On review, we determine whether the record contains substantial evidence from which the juvenile court could reasonably find that removal was necessary to protect the child. (*In re A.S.*, *supra*, 202 Cal.App.4th at p. 244.)

B. *There is Substantial Evidence Removal was Necessary to Protect C.B.*

The evidence amply supports the juvenile court's dispositional findings. C.B. suffered respiratory distress as a result of in utero heroin and methadone exposure. She remained at risk after her birth; Mother relapsed when C.B. was three months old, stopped tapering her methadone dosage, and insisted on breastfeeding, which caused a significant spike in C.B.'s withdrawal score. Father did not protect C.B. from Mother's substance abuse; he *encouraged* Mother's heroin use during pregnancy. He continued to live with Mother, and there was no evidence he asked her to leave after she relapsed or breastfed C.B. while taking methadone.

Father had a drug history of his own. He used heroin and abused prescription painkillers in the past and tested positive for opiates and morphine days after C.B.'s birth. At trial, he claimed to be taking Percocet, Vicodin, and codeine and testified he received morphine during 36 trips to the emergency room in 2015. Father testified he could not stand straight or get out of bed in the morning without prescription medication and claimed he could not feel his left ear or fingertips. The juvenile court could reasonably infer that Father's chronic pain and prescription drug intake rendered him incapable of providing adequate supervision and protection for infant C.B.

The Agency made reasonable efforts to prevent the need for removal (§ 361, subd. (d)), without success. Father did not cooperate with the Agency's voluntary services, provided no evidence of valid prescriptions, and refused to submit to drug testing. He continued living with Mother, despite her ongoing struggle with addiction. Absent drug tests, proof of current prescriptions, release of medical information, or other evidence that



could verify his legal use of prescription medication, Father's past conduct remained the court's best predictor of his future behavior. (*In re T.V.*, *supra*, 217 Cal.App.4th at p. 133.) The juvenile court reasonably found that C.B. was in substantial danger of serious physical harm if she remained in Father's care. (See § 300.2 ["The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child."].)

During closing arguments, Father's counsel suggested the juvenile court could simply require Mother or Father's roommates to move out. However, the juvenile court could reasonably infer from Father's past conduct that C.B. could not safely remain in his care even if Mother or his roommates were to leave. Father suggests other possibilities on appeal, such as requiring the paternal grandparents to move into the home or conditioning placement on Mother and Father complying with a safety plan, unannounced visits, and/or in-home parenting classes. These proposals fare no better. At the time of the disposition hearing, neither parent had complied with the Agency's voluntary case plan. Mother and Father both tested positive for controlled substances and failed to appear for drug tests; Mother relapsed and stopped tapering her methadone dose. Both parents *and* the paternal grandparents were adamant that Mother should breastfeed, despite a court order, the Agency's recommendation, and medical advice to the contrary. Given their past noncompliance, "the juvenile court could reasonably determine [C.B.] could not be safely placed in [the parents'] custody in the hope that [they] would comply with court orders or [Agency] supervision." (*In re John M.* (2012) 212 Cal.App.4th 1117, 1127.) The court was not required to wait until C.B. sustained further physical

harm before removing her from Father's physical custody. (*In re Cole C.* (2009) 174 Cal.App.4th 900, 918.)

Finally, Father contends the juvenile court improperly based its ruling on his bad "attitude," hostility, and lack of cooperation with the Agency. He cites *In re Jasmine G.* (2000) 82 Cal.App.4th 282 for the proposition that subjective assessments of parents' "hostility" or "lack of cooperativeness" do not support removal from their care. (*Id.* at p. 290.) To the contrary, a juvenile court should consider the parents' "current understanding of and attitude toward the past conduct that endangered a child." (*In re J.N., supra*, 181 Cal.App.4th at pp. 1025-1026 [disposition finding not supported where parents were "remorseful" and "willing to learn from their mistakes"]; cf. *In re John M., supra*, 212 Cal.App.4th at p. 1127 [disposition finding supported where mother failed to acknowledge her conduct was problematic].) Father's failure to appreciate the gravity of Mother's addiction or the risk of harm to C.B. from both parents' substance abuse amply supports C.B.'s removal from his custody.<sup>14</sup>

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<sup>14</sup> In *In re Jasmine G., supra*, 82 Cal.App.4th 282, the court held there was insufficient evidence to support the dispositional finding where both parents expressed remorse for using corporal punishment, disavowed corporal punishment under oath, and had attended parenting classes and therapy. (*Id.* at pp. 288-290.) The child in *Jasmine G.* testified she had no fear of either parent, and a therapist opined it was "totally safe" to return the child to her parents. (*Id.* at p. 289.) Against this backdrop, the social worker's subjective perception of the parents' family values was insufficient to support removal under section 361. (*Ibid.*) Here, by contrast, Father's attitude reflected that he did not fully appreciate how his and Mother's drug dependency problems put C.B. at substantial danger. Father's lack of remorse and noncompliance with the Agency's voluntary case plan weigh in favor of C.B.'s removal.

In short, substantial evidence supports the juvenile court's dispositional finding; removal from Mother *and* Father's custody was necessary to protect C.B. from serious physical harm.

#### DISPOSITION

The judgment is affirmed.

NARES, J.

WE CONCUR:

HUFFMAN, Acting P. J.

PRAGER, J.\*

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\* Judge of the San Diego Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.